

analysis

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I cannot conceive fraternity being legally enforced without liberty being legally destroyed.—Bastiat

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Thou Shalt Not--or FEPC

WHOMEVER shall worship any other God than the Lord," begins the 1650 preamble to the Connecticut penal code, "shall surely be put to death." The heavy hand of organized society did not stop at mere worship; the manner of worship, the ritual, was also the concern of the law, and believers who preferred unauthorized rituals were pilloried, exiled and threatened with death.

For three hundred years, then, compulsory virtue has been an integral of American polity. Despite our democratic protestations, we deny the right of error, once the "truth" has been legalized, and are quick to put the rod of the law to those who persist in pursuing what has been officially declared a fallacy; like polygamy (which is a most common practice), or free trade (there is no other kind), or gambling (which is freedom of choice). Our Judeo-Christian conscience is strong for statute sin.

Right now our lawmakers are tinkering with a plan to curb the human impulse to choose one's associates. The raging passion of righteousness is directed at employers who close their payrolls to persons of particular creeds, races or ancestry. Accordingly, a law is advocated to compel such employers to subscribe to the brotherhood of man, unprejudiced. To see that they so do, there shall be set up an inquisitorial tribunal to be known as the Fair Employment Practices Commission.

If this latest experiment in enforced morality is put into operation, it will not only fail in its purpose (as has every other such law), but will spawn practices more reprehensible than the one it is aimed to correct, and will give society another push down the steep hill of collectivism.

GENERALLY speaking, American law has not been too intrusive in the realm of human associations. In the South, to be sure, whites are not permitted to commingle with Negroes, and in all the states when, how and with whom we may live in conjugal bliss is covered by code. Seeing how "social welfare" is coming to the fore these days, the possibility of legalized human breeding must not be put aside, nor should we forget that "security" could cause suspension of the meetings of the Caliopean Literary Society. But, on the whole, companionship is one human habit American law does not yet intrude upon too much.

In the matter of business associates, however, this abstinence is weakening. That is because of the growing notion that private capital is a reprehensible institution, one that bears watching, curbing and chastisement. Since the owner of capital came by it dishonestly, the notion runs, the society from which he got it has a moral, if not legal, claim to it, and therefore is justified in designating his collaborators. Freedom of choice must be curtailed. And yet, when you think of it you see that as a practical matter, the free exercise of judgment in the selection of associates is essential to both the owner of capital and society. When a capitalist employs a helper he is entrusting capital to his care; the lowliest member of the crew has it within his power to do harm to these ac-

cumulations, and even bankruptcy can be traced to the incompetence or dishonesty of lieutenants. The success of a business depends on sound judgment in the selection of subordinates. Its failure does not benefit society. If the employer is held accountable by the marketplace, refusing him its custom when he is inefficient, the marketplace ought not to interfere with the conduct of his business. Enterprise can serve only when it is free.

Congeniality is an important element in selection; it is as important as competence. A com-

It is of the very essence of democracy that the individual citizen shall be invested with the inalienable and sovereign right to make an ass of himself

... Well, then, if any citizen or body of citizens chooses to exercise this sovereign right, on any pretext or none, is it competent for another member of democracy to demur or interfere?

—Albert Jay Nock

plement of workers of similar backgrounds and habits will be more productive than one characterized by divergencies. In time, of course, association will liquidate the particularisms of Chinese, Spaniards, Masons, Jews and Catholics, but until the edges of strangeness wear off the team cannot cooperate to best advantage. Then, again, the nature of the work may necessitate selection of workers on the basis of religion, race or ancestry. You could hardly expect the publisher of Catholic books to employ Protestants, a kosher butcher to employ one unsympathetic to the ritual, a Chinese laundryman to employ one with whom communication is difficult.

IT IS when the choice is influenced by dislike of racial or religious groups that the charge of sinfulness is made. It is a wrong against society, if not against God, to refuse employment to Jews as Jews, to Catholics as Catholics. Why? True, prejudice is an irrationality, perhaps a form of insanity. But, if all irrationality were banned by law, would there be anybody to enforce it? Can ignorance or emotionalism be abolished by decree? He who hates his fellow-man harbors a canker in his heart, and if the cankerous condition gives him pleasure that is his affair. At any rate, society has no power to make him over, no mandate to try it.

The charge is made, however, that in venting his spleen against given groups the employer deprives them of their right to earn a livelihood. That is silly. If he employs a Jew instead of a Frenchman, the latter may be hurt; but, if the selection is reversed, the Jew is hurt; there being but one job, one or the other must suffer unemployment. If he has need of both workers and refuses to hire one of them because of his

prejudice, then he hurts himself, which is his privilege. The right to earn a livelihood is impaired by the lack of jobs, not by prejudice, and the current FEPC enthusiasm is not directed at the economic problem of unemployment. It is a venture in compulsory ethics only.

The incongruity of this FEPC business is shown when we follow through on principle. If the law—which is presumed to be an impartial agency of society—may compel a man to employ one he does not favor, it may also compel a man to labor for an undesirable employer. So, a white lawyer would be justified in refusing the case of a Negro client, and an Andy Cohen could be hailed into court for refusing to play ball for a John McGraw. If a writer should refuse to sell his manuscript to a publisher because of the latter's faith, and the manuscript should prove to be a gold-mine, why should not the publisher look to the law for damages? When labor is scarce, or when a particular laborer possesses unique skill, it would be quite proper (if the FEPC law is proper) for the rejected employer to howl "discrimination."

WHAT may we reasonably expect to follow from the enactment of an FEPC law?

Prejudice where there is none, more intense prejudice where it already exists, and, of course, a tendency toward evasion. A man who now hires without regard to race or creed would be inclined, under the law, to take these facts into consideration; for the subsequent discharge of an employee for any reason might cause him to be hauled up as a discriminator; if the investigating committee should "qualify" the discharged employee the possibility of a backpay fine could be added to the unpleasantness of forced association with the unwanted person. Firms which do not now consider the applicant's race or religion, as well as those which do, would have to guard against the wrath of the FEPC by employing some of those usually considered discriminated against, and these would always carry the stigma of "necessary evil." They would be so singled out not only by the employers but also by their fellow-workers, with consequent unpleasantness. Since the proposed law also presumes to protect the employee from discrimination in the matter of advancement, there would always be the suspicion that the one advanced did not actually deserve preference, that he was a sop to the law. Prejudice would thus be accentuated.

Legal efforts to compel conformance with a prescribed code of behavior always bring about practices more reprehensible than the evil singled out for correction. Our experience with the prohibition amendment vividly emphasized that fact. People drank more, not less, because of this attempt at compulsory abstinence, and the evils of the saloon were as nothing compared to those of bootlegging, hijacking and the apocryphal. So with the anti-discrimination law. Detective agencies would be employed to supply information about the race, religion and ancestry of applicants, for the employer is prohibited by this law from asking such questions. If an employee resigns of his own ac-

cord the charge of discrimination would be automatically voided; therefore, nasty means of forcing resignations would be resorted to. References would be so worded as to "tip off" prospective employers and make rejections of the applicant "within the law." Nor is it impossible that union leaders would, at a price, lend themselves to discriminatory practices by refusing, on the ground of incompetence, to certify certain undesirables for employment. The law puts people on their guard and spurs the imagination.

SOME of the situations FEPC would be confronted with, and the incongruities that would ensue from its efforts to handle them, are worth considering.

Would the FEPC "qualify" an atheist for the faculty of a Catholic university? Would it undertake to advise advancement of a white professor at a Negro institution? How would it handle discrimination in the manning of hospital staffs? Or of editorial staffs? Or its own staffs? If the next step in the advancement of a worker is a managerial post FEPC would be in a position to influence the policies of a business, and how would it meet the objection of the owners on these grounds?

One law now condones, even demands, discrimination. Under practices following from the Wagner Labor Relations Act, an employer is compelled to give preference to a labor union member, which is definitely discriminatory. Suppose, in compliance with this law, an employer "discriminates" in favor of a Jew who is a member of the union and against a Catholic who is not and who cannot gain admission into the union. Suppose the latter brings his case to the FEPC. This agency for non-discrimination is put into contention with the discriminatory one. Which will prevail? Will the FEPC have power to compel the union to enlarge its membership by including the Catholic? It is an all-Jewish, closed-book union.

During times of widespread unemployment the problem of the FEPC would be most poignant. Many of those dropped from the payrolls would undoubtedly bring up the charge of "discrimination." The crowded calendar of the FEPC (like every bureau, it would always be "undermanned") would compel resort to peremptory rules of placement, but since under the circumstances most of the complainants would remain unemployed, the charge of discrimination would be levelled at the FEPC itself! (Even at its inception, the proposed FEPC would be discriminatory, in that firms employing less than fifty, as well as "non-profit" organizations, are exempted from the provisions of the law. Why?)

THESE confusions and contradictions are inherent in the proposed law, because it attempts to deal with the ethical consequences of an economic problem which it cannot solve. If the problem of unemployment were solved the problem of prejudice would be academic. But, more important than the prejudice problem is the power which would be thrust on the FEPC by its peculiar functions. For fear of reprisals and to avoid investigations, employers would turn to this agency for help, at the non-managerial level at any rate. Thus, the FEPC could in time become the national employment agency, and in effect the workers would achieve civil service ranking. The power thus acquired by the FEPC would not be unlike that exercised by labor administrations under fascism. The unions would be superseded, private employment agencies would go out of business, personnel departments would be of no use.

The political potential of the FEPC must not be overlooked. The temptation to "buy" votes with a record of "anti-discrimination" placements could not be put aside by the regime, while the opposition would make the charge, even if it were not true, for the purpose of winning the suffrage of those who were "discriminated" against; our political campaigns would be

impregnated with the stench of racial and religious antagonisms. Furthermore, while the proposed law does not contemplate discrimination on the grounds of sex, age, or the fraternity one belongs to, what would prevent pressure groups from demanding that the scope of the FEPC be extended? The "over 40" workers could in justice claim discrimination, while unemployed women linotypers might ask for redress on the same grounds. Since power is all a bureaucrat lives for, would not the FEPC be tempted to

either encourage or foster such pressure groups?

It is said that communists and fellow-travelers are promoting this latest piece of moralistic legislation. They should be, if they are not, because the friction and the confusion ensuing from its enactment would be just the thing for the advancement of American Communism. Moreover, the power over industry that would gravitate toward the FEPC would make it a useful instrument to get hold of. Its chairman would be a commissar in fact.

You Can't Burlesque a Burlesque

BY FREEMAN TILDEN

BACK somewhere in 1933 or 1934 my old friend John Phillips said to me, "Freeman, why don't you write a satire on this New Deal combination of insanity and roguery?" You see, John had remarked what he thought, in my writing, a tendency toward the gently satirical and ironic. He had in mind, he told me, another "Gulliver's Travels," or "Persian Letters" of Montesquieu; he thought the moment was opportune.

Now, I had thought of this very thing. But I had put it away from me and accepted the frustration of a venture which was much to my liking. I had reason, and nothing has happened in our Government since to make me think I was in error.

I replied to John at that time: "It is impossible. You cannot satirize a satire. Both Dean Swift and Montesquieu had before them as models, not lunatics, but politicians who were indulging in special errors or excesses. The success of their satires lay in their humorous seizure of weaknesses, and their talent for throwing these into high relief; 'blowing them up' as the photographers say. But the background of government, against which they were constructing their fun, was essentially regular and sane. It had to be, for you cannot pleasure readers by exhibiting to them a bunch of helpless mental wrecks. You can only make them weep."

I proceeded to explain exactly what I meant. I had just come back to New York from New Mexico, and I had been in the frontier town of Gallup (the jumping off place for the Navajo Indian reservation) when a shipment of 500,000 razor blades had arrived, sent as a welfare donation to meet the depression crisis. As the Navajos have no hair on their faces, and consequently do not shave, it threw the poor red men into an even deeper depression. I had seen a truckload of welfare pinto beans roll into Albuquerque from Denver, destined to the Estancia Valley of New Mexico, where the people were in need of everything except pinto beans, of which commodity they had storehouses bulging, and no market for them. Incidentally, the local truckman refused to transfer the beans to the Valley. He said if he showed up with pinto beans out there, the farmers would lynch him.

I had seen concrete roads being laid down, starting from nowhere and arriving the same place; pine lumber being shipped from Georgia to Oregon, to build CCC camps, and Oregon fir being shipped to Georgia for the same purpose; carloads of wheat flour being shipped into my own vicinity for the "needy," who took it home and stopped the hogs with it, or threw it away; embryo lawyers being shipped direct from the Harvard Law School and placed in key positions in the Washington departments; and pale pukers from high school art classes being commissioned to daub the walls of post-offices and Federal buildings with horrific caricatures of Nature, beast and man.

How can you write a satire on government and politicians when, no matter how fantastic the idiocies you invent, you discover shortly afterward that the actual performances have

made your concoction look like sobriety and wisdom? What is the satirist to do when he opens his newspaper every morning and finds a record of political imbecilities beyond anything he could have imagined in the field of human activity? That is the reason that this period from 1933 to 1948 had not seen printed a single satirical fiction or essay worth looking at.

WELL, satire is a rather delicate weapon. If that were impossible, why not burlesque? Alas, I looked into that, too; and had to give up the notion. The Government of the United States, and the clowns who operated it, beat me to it every time. You cannot burlesque a burlesque. Just think what burlesque is! With slapstick and green whiskers, the low comedians of the pre-Minsky period used to tear the theatrical shirt off some pretentious melodrammer, and get belly-laughs from the connoisseurs who loved to see hams and windbags deflated.

I give you a case in point. A very funny burlesque character in the old days was that of a Latin-American revolutionary General, covered with medals, clad in a pink and green uniform, with flowing mustachios and a peacock strut. Who could have suspected that, in the midst of a war mostly cunningly contrived by himself, a President of the United States, as densely ignorant of the technique of land or sea warfare as a Kentucky mountaineer, would order the Kleig lights turned on himself while he bumbled about "Your Commander in Chief" and would pose as an expert on ordinance, strategy, tactics, navigation and the Laws of War? Can you burlesque that one? How? Can you burlesque the actual burlesque of the day when the Japanese jumped us at Pearl Harbor, and the Chief of Staff couldn't be located, though somebody surmised that he was riding a Shetland pony in several directions in Rock Creek Park? Can you burlesque fat Winston's glib pronouncement that Italy was the "soft underbelly" of Hitler's fronts—a bit of civilian arrogant ignorance which cost the lives of thousands of American young men, and a fit companion to fat Winston's slaughter of Britishers at Gallipoli a generation before?

And so it goes. You can't burlesque a natural burlesque. Could you have thought up that fantasy of a lot of important nobodies holding a conference about nothing in Bogotá, Colombia, and being blown out of their chambers by a mob of rioters? Can you burlesque the fact that we spent four millions of dollars (at least, by confession) to buy the Italian elections on April 18-19, in spite of the fact that it is still considered slightly immoral to buy an election at home? Can you burlesque our diplomatic adventures in China? Maybe the Chinese could. I can't. I don't think you can. Can you burlesque the United Nations group of panhandlers and vagrants? Can you . . . ?

I think that's explanation enough. My advice to young writers, at this juncture, is not to go in for satire on Government. You get too much competition from Government.